

REMARKS

Reconsideration and allowance are respectfully requested.

Claims 1-3 and 5-18 are pending.

The claims are not re-presented herewith, as no amendments have been made to the claims to address the claim rejections.

Claim Rejection - 35 U.S.C. 102

Claims 1-3, 5-18 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Dyett.

Applicant respectfully traverses this objection.

The Examiner states:

Dyett does not teach that the volume storage buffer is of variable size or that a moveable wall is present in the invention.

It would have been obvious to one of ordinary skill in the art at the time of the invention to make right wall of the space adjustable. The motivation being so one could adjust the volume of the container to be able to handle multiple size loads. See *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). By making the wall adjustable, the storage buffer would have become a variable volume storage buffer and would vary the volume of the space (28) and the variable volume storage buffer. It is inherent that the movement for the wall would be done by a moving mechanism.

In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable,

resort to speculation or hindsight reconstruction to supply deficiencies in the factual basis. In this vein, the examiner may not rely on so-called mechanical or *per se* rules of obviousness to sidestep the fact specific analysis of claims and prior art required by 35 U.S.C. § 103(a). *In re Ochiai*, 71 F.3d 1565, 1570-71, 37 USPQ2d 1127, 1132-33 (Fed. Cir. 1995); *In re Wright*, 343 F.2d 761, 769-70, 145 USPQ 182, 190 (CCPA 1965).

In the present case, the examiner's conclusion that the subject matter recited in claims 1, 17 and 18 would have been obvious within the meaning of § 103(a) rests on the combination of a legally improper *per se* rule of obviousness culled without foundation from *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). In fact, in *Stevens*, the examiner cited references which taught both the basic concept of adjustability in the same art area as the claimed device, and the specific joints being claimed. Thus, in *Stevens*, the examiner provided sufficient evidence from which to conclude that the claimed subject matter would have been obvious. Such is clearly not the case here. Dyett, the only evidence proffered by the examiner to support the rejection of claims 1, 17 and 18, is completely devoid of any suggestion to provide a storage buffer as disclosed therein with a movable wall of the sort recited in the present claims.

The mere fact that prior art may be modified in a manner proposed by the examiner does not make the modification obvious absent a suggestion in the prior art of the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992).

Therefore, independent claims 1, 17 and 18, as well as all of the dependent claims, are not obvious in view of Dyett.

Furthermore, claim 18 requires a specific detailed mechanism to move the movable wall, none of which is taught or suggested by Dyett. Claim 18 requires:

a variable volume storage buffer, interposed between the feeder and the feed channel and delimited at the bottom by a wall comprising a top branch of a conveyor belt moved by a motor and looped at opposite ends around an upstream pulley and a downstream pulley; associated rigidly with the top branch of the belt being a bottom end of a substantially vertical wall rendered capable of movement, generated by the motor, between two limit positions of which the first corresponds to a condition of minimum capacity afforded by the variable volume storage buffer and the second corresponds to a condition of maximum capacity afforded by the variable volume storage buffer

There is simply nothing in Dyett that would teach or render obvious such a structure for moving a movable wall of a variable volume storage buffer and the Examiner cannot create such structure from whole cloth. Dyett's deficiencies must be overcome or the rejections under Dyett must fail. For this further reason, claim 18 is allowable over Dyett.

Conclusion

In view of the above, it is respectfully submitted that Dyett does not anticipate or render obvious any of the claims and it is respectfully requested that the application be allowed and a Notice to that effect issued. Applicants' counsel remains ready to assist the Examiner in any way to facilitate and expedite the prosecution of this application.

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Respectfully submitted,

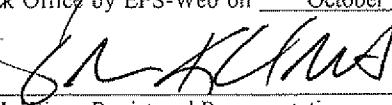


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